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FM USMISSION USUN NEW YORK
TO SECSTATE WASHDC 7315

C O N F I D E N T I A L SECTION 1 OF 2 USUN 1191

E.O. 11652: GDS
TAGS: TSPA, PFOR, UN
SUBJECT: OUTER SPACE LEGAL: MOON TREATY -- NATURAL RESOURCES

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2. DETAILS. WE ARE NOW IN A POSITION TO REPORT A PRO-
POSAL ON NATURAL RESOURCES WHICH APPEARS TO BE CONSISTENT
WITH OUR INSTRUCTIONS AND WHICH OTHER MEMBERS OF THE
LEGAL SUBCOMMITTEE ARE SEEKING AUTHORITY TO ACCEPT. THE
TEXT WAS DRAWN UP BY ITALIAN REP CAPOTORTI [redacted] BIED
INITIAL VERSION OF US PROPOSAL BEFORE THE WORKING
GROUP 2 APRIL BUT IT WAS AWKWARDLY DRAWN AND CONTINUED
TO INCLUDE SUCH PROVISIONS UNACCEPTABLE TO THE US AS
THE SOVIET-PROPOSED BAN ON LICENSE ARRANGEMENTS IN
CONNECTION WITH LUNAR ACTIVITIES. DURING THE 2 APRIL
DISCUSSIONS AT THAT EARLY STAGE, INDIA, FOR EXAMPLE,
WAS STILL ADVOCATING THAT THE TREATY INCLUDE A MORATORIUM
ON ANY EXPLOITATION OF LUNAR RESOURCES UNTIL

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AN AGREED INTERNATIONAL REGIME WERE ESTABLISHED; ALTHOUGH OUR INSTRUCTIONS DO NOT COVER THIS POINT, NOT HERETOFORE RAISED, WE SAID OUTRIGHT THAT WE WOULD NOT BE ABLE TO RECOMMEND OR AGREE TO SUCH A MORATORIUM. (WE WERE ALSO CONFRONTED WITH VARIOUS EXTREMELY DIFFICULT NON-ALIGNED/LDC REQUESTS, [BIED
E.G., THAT THE SIMPLE AND BROADER TERM "RESOURCES" SHOULD BE USED IN PLACE OF THE US-PROPOSED "NATURAL RESOURCES".) [

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3. THE SOVIET DEL TOLD US THEY BELIEVE THEY CAN ACCEPT THE REVISED CAPOTORTI TEXT. [ ], WHO HAS BIED
REASONABLY RELIABLE LINES OUT TO NON-ALIGNED/LDC DELS, TELLS US HE BELIEVES INDIA, EGYPT, IRAN, BRAZIL AND MEXICO, [ ], WILL IN DUE COURSE BIED
ALSO ACCEPT IT.

4. THE CAPOTORTI TEXT READS AS FOLLOWS: BEGIN QUOTE

"1. THE MOON IS NOT SUBJECT TO NATIONAL APPROPRIATION BY CLAIM OF SOVEREIGNTY, BY MEANS OF USE OR OCCUPATION, OR BY ANY OTHER MEANS.

"2. NEITHER THE SURFACE OR SUBSURFACE OF THE MOON, NOR, SUBJECT TO THE PROVISIONS OF ARTICLE V, PARA 2, THEIR PARTS AND NATURAL RESOURCES SHALL BECOME THE PROPERTY OF ANY STATE, INTERNATIONAL INTERGOVERNMENTAL OR NON-GOVERNMENTAL ORGANIZATION, NATIONAL ORGANIZATION OR NON-GOVERNMENTAL ENTITY, OR OF ANY NATURAL PERSON. THE PLACEMENT OF PERSONNEL, SPACE VEHICLES, EQUIPMENT FACILITIES, STATIONS AND INSTALLATIONS ON OR BELOW THE SURFACE OF THE MOON, INCLUDING STRUCTURES CONNECTED WITH ITS SURFACE OR SUBSURFACE, SHALL NOT CREATE A RIGHT OF OWNERSHIP OVER PARTS OF THE SURFACE OR SUBSURFACE OF THE MOON.

THE FOREGOING PROVISIONS ARE WITHOUT PREJUDICE TO THE

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INTERNATIONAL REGIME REFERRED TO IN PARA 4 OF THIS ARTICLE.

"3. ALL STATES HAVE AN EQUAL RIGHT TO THE EXPLORATION AND USE OF THE MOON INCLUDING THE EXPLOITATION OF ITS NATURAL RESOURCES WITHOUT DISCRIMINATION OF ANY KIND, UNDER THE CONDITIONS STIPULATED IN THIS TREATY.

"4. STATES PARTIES TO THIS TREATY UNDERTAKE TO ESTABLISH AN INTERNATIONAL REGIME GOVERNING THE EXPLOITATION OF THE NATURAL RESOURCES OF THE MOON, WHEN SUCH EXPLOITATION BECOMES FEASIBLE.

"5. THE MAIN PURPOSE OF THE INTERNATIONAL REGIME TO BE ESTABLISHED SHALL BE TO ENSURE THE ORDERLY AND SAFE DEVELOPMENT AND RATIONAL MANAGEMENT OF THE NATURAL RESOURCES OF THE MOON, TO EXPAND OPPORTUNITIES IN THE USE THEREOF AND TO DETERMINE AN EQUITABLE SHARING BY ALL STATES IN THE BENEFITS DERIVED THEREFROM, TAKING INTO CONSIDERATION, IN PARTICULAR, THE INTERESTS AND NEEDS OF THE DEVELOPING COUNTRIES.

"6. A CONFERENCE OF ALL STATES PARTIES TO THIS TREATY SHALL BE CONVENED BY THE DEPOSITARY GOVERNMENTS AT THE REQUEST OF ONE-THIRD OF SUCH STATES, IN ORDER TO IMPLEMENT THE PROVISION OF PARA 4 OF THIS ARTICLE, ON THE BASIS OF THE PRINCIPLE THAT THE NATURAL RESOURCES OF THE MOON ARE THE COMMON HERITAGE OF MANKIND.

"7. NO ACTIVITIES SHALL BE CARRIED OUT ON THE MOON WITH RESPECT TO ITS NATURAL RESOURCES WHICH MAY BE INCOMPATIBLE WITH PURPOSES OF THE INTERNATIONAL REGIME TO BE ESTABLISHED AS SPECIFIED IN PARA 5 OF THE ARTICLE.
END QUOTE

3. REQUEST ADVICE ON ACCEPTABILITY OF ABOVE ARTICLE TO USG.

5. THE FOLLOWING COMMENTS ARE SUBMITTED BY JAY OF ANALYSIS AND EXPLANATION. CAPOTORTI'S PARA 1 ACCURATELY AND USEFULLY REPRODUCES THE OUTER SPACE TREATY ART II PROHIBITION ON LUNAR APPROPRIATION WHICH IS THE AGREED TREATY BASIS FOR WHAT FOLLOWS. HIS PARA 2 INCORPORATES

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THE PROVISION WE AND THE SOVIETS AGREED LAST YEAR PROHIBITING OWNERSHIP OF AREAS OF THE MOON (SEE ART X(2) OF THE 1972 OSLS REPORT).

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CAPOTORTI PARA 2 CONTAINS REFERENCE TO THE CORRECT THREE-PRONGED SAVINGS CLAUSE (ART V(2) AGREED 1972) PERMITTING REMOVAL OF LUNAR SAMPLES FOR SCIENTIFIC PURPOSES, THE USE OF LUNAR NATURAL RESOURCES BY ASTRONAUTS, AND EXPLOITATION IN ACCORDANCE WITH THE REGIME THAT THE PARTIES AGREE TO TRY TO NEGOTIATE WHEN AND IF "HARD EXPLOITATION" OF LUNAR NATURAL RESOURCES BECOMES FEASIBLE.

6. CAPOTORTI PARA 3 INCORPORATES A STATEMENT OF THE EQUAL RIGHT OF EVERY STATES TO EXPLORE AND USE THE MOON WHICH PARALLELS THE SECOND SENTENCE OF OUTER SPACE TREATY ART I. HIS FOLLOWING PARAS 4, 5 AND 6 CLOSELY PARALLEL EARLIER US PROPOSALS CONCERNING THE NEGOTIATION OF AN APPROPRIATE INTERNATIONAL REGIME ON HARD EXPLOITATION. THUS, PARA 4 ACCEPTS THE US THESIS THAT A MEANINGFUL REGIME CANNOT AND SHOULD NOT BE NEGOTIATED NOW, IN ADVANCE OF THE DISCOVERY OF ECONOMICALLY EXPLOITABLE

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NATURAL RESOURCES, BUT THAT PARTIES TO THE CURRENT TREATY SHOULD NOW AGREE IN PRINCIPLE TO TRY TO NEGOTIATE AN AGREED REGIME "WHEN SUCH EXPLOITATION BECOMES FEASIBLE." HIS PARA 5 SPEAKS IN GENERAL TERMS ABOUT THE PURPOSE OF AN INTERNATIONAL REGIME AND FOLLOWS US PROPOSALS AND SUGGESTIONS IN STATING THAT THESE PURPOSES ARE "TO ENSURE THE ORDERLY AND SAFE DEVELOPMENT AND RATIONAL MANAGEMENT OF THE NATURAL RESOURCES OF THE MOON, TO EXPAND OPPORTUNITIES IN THE USE THEREOF AND TO DETERMINE AN EQUITABLE SHARING BY ALL STATES IN THE BENEFITS DERIVED THEREFROM..." THE PARA GOES ON TO INCLUDE THE TERMINAL CLAUSE "TAKING INTO CONSIDERATION, IN PARTICULAR, THE INTERESTS AND NEEDS OF THE DEVELOPING COUNTRIES."

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NOTHING IN PARA 5, OF COURSE, DEALS WITH PERCENTAGES OF SHARES OR WHAT IS TO BE RECOVERED BY WAY OF INVESTMENT (E.G., NOT ONLY LAUCHING COSTS BUT, IF WE WISHED, R&D COSTS OF LARGE SEGMENTS OF NATIONAL SPACE PROGRAMS, ETC.).

7. CAPOTORTI PARA 6 PARALLELS THE 1972 US PROPOSAL

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THAT THE DEPOSITARY GOVERNMENTS WILL CALL A CONFERENCE TO TRY TO NEGOTIATE AN INTERNATIONAL HARD-EXPLOITATION REGIME WHEN ONE-THIRD OF THE PARTIES REQUEST. A PRINCIPAL DIFFERENCE IS CAPOTORTI'S TREATMENT OF THE PRINCIPLE THAT LUNAR NATURAL RESOURCES ARE TO BE REGARDED AS THE COMMON HERITAGE OF MANKIND. LAST YEAR THE US PROPOSED THAT THIS PRINCIPLE SHOULD BE DECLARED OUTRIGHT IN THE CURRENT TREATY; BECAUSE OF SOVIET CONCERNS, NEVER FULLY EXPLAINED, CAPOTORTI'S TEXT DOES NOT DECLARE THIS PRINCIPLE NOW BUT CONTENTS ITSELF WITH STATING THAT THE HARD EXPLOITATION CONFERENCE WILL BE HELD "ON THE BASIS OF THE PRINCIPLE THAT THE NATURAL RESOURCES OF THE MOON ARE THE COMMON HERITAGE OF MANKIND." THE JAPANESE, WHO HAVE TO A CERTAIN EXTENT SHARED SOVIET CONCERNS ABOUT DECLARING THE COMMON HERITAGE PRINCIPLE NOW, WILL PRESUMABLY WELCOME THIS ASPECT.

8. FINALLY, CAPOTORTI'S PARA 7 INCORPORATES A SWEDISH PROPOSAL WELCOMED BY THE UK AND FRENCH REPS, WHICH STATES THAT LUNAR ACTIVITIES INCOMPATIBLE WITH THE SPECIFIED PURPOSES OF THE FUTURE INTERNATIONAL REGIME ARE NOT TO BE CARRIED OUT. AGAIN, GIVEN THE GENERALITY, ALBEIT REASONABLY CAREFULLY DRAFTED, OF THESE PURPOSES AS SPECIFIED IN CAPOTORTI PARA 5, WE BELIEVE THIS SHOULD BE ACCEPTABLE.

9. IN THE CONTEXT OF REPORTING ON LUNAR MISSIONS AND RESULTS, WHICH HAD EARLIER BEEN AGREED (EXCEPT FOR THE QUESTION OF TIME OF REPORTING), INDIA TODAY PROPOSED AN OBLIGATION TO NOTIFY OTHER PARTIES IN THE EVENT OF THE DISCOVERY OF LUNAR "RESOURCES". THIS, TOO, NEEDS TO BE CONSIDERED IN THE CONTEXT OF THE CAPOTORTI PROPOSAL.

10. THE SUBCOMMITTEE ON 11 APRIL RETURNS TO THE CAPOTORTI TEXT AND THE FEW UNRESOLVED MOON TREATY ISSUES.

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